

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**November 8, 2005**

**GENERIC DOCKET TO EXAMINE  
TARIFFS SETTING RATES FOR  
INMATE PAYPHONE USAGE**

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**DOCKET NO.  
04-00166**

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**ORDER SETTING INTERIM RATE FOR  
INMATE PAYPHONE USAGE**

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This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 26, 2004 for the purpose of establishing an interim rate cap for inmate payphone usage. After hearing oral presentations and reviewing the record in this docket, a majority of the panel voted to set an interim rate cap in the amount of \$1.50 for local calls from pay telephones at correctional facilities. The panel also voted to open a docket for the purpose of promulgating rules governing the rates and terms of tariffs providing for inmate payphone usage.

**BACKGROUND**

**Creation of this Docket**

On May 17, 2004, Global Tel\*Link Corporation ("Global Tel") filed a petition for an expedited declaratory ruling regarding rates for local payphone calls made from correctional or inmate facilities, requesting that the TRA declare that the amended tariff it filed on May 7, 2004 is not prohibited by TRA Rule 1220-4-2-.45(2).<sup>1</sup> In support of its request, Global Tel referred to the

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<sup>1</sup> TRA Rule 1220-4-2-.45(2) states as follows:

Local call charges shall not exceed the amount authorized by the Authority for a local call from pay telephones operated by the LEC serving the area in which the pay telephone is located

fact that the existing tariff of BellSouth Telecommunications, Inc (“BellSouth”) states that the rate for local calls from payphones will be a market-based rate. Global Tel asserted that because the previous cap for local calls had been tied to BellSouth’s rate, which is now unregulated and market-based, there is no longer a cap in existence. For this reason, Global Tel maintained that Rule 1220-4-2-.45(2) is obsolete and, with no cap limiting rates for local calls from correctional facility payphones, Global Tel can assess a market-based rate which in this instance it claimed to be \$0.50 per minute.

Global Tel also asked that the remainder of the tariff, including rates for intraLATA toll and local collect operator surcharges, be found consistent with the restrictions for payphone access lines, particularly those placed on inmate services found in the payphone tariff of BellSouth.<sup>2</sup> Companies purchasing payphone access line service from BellSouth must follow the restrictions in BellSouth’s tariff on the rates that payphone providers can charge their customers from correctional facilities. These companies cannot assess charges for intraLATA toll and local operator surcharges higher than the BellSouth rate. BellSouth’s tariff also contains a provision stating that the local message charge cannot be higher than the amount specified in BellSouth’s tariff, which states that the rate is market-based. Global Tel asserts that the rates proposed in its amended tariff comply with these restrictions. Global Tel’s petition was assigned Docket No. 04-00144.

The voting panel assigned to Docket No. 04-00144 considered Global Tel’s petition at the June 7, 2004 Authority Conference and determined that a generic docket should be opened for the purpose of examining all similar tariffs that set rates for correctional facility or inmate payphone usage.<sup>3</sup> In accordance with that panel’s instructions, this docket was opened and Authority Staff commenced the task of reviewing tariffs filed with the Authority establishing rates for inmate payphone usage.

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<sup>2</sup> BellSouth General Subscribers Services Tariff Section A7

<sup>3</sup> Counsel for Global Tel agreed to withdraw the petition for declaratory ruling upon the Authority’s action to examine inmate payphone tariffs.

## **Regulation of Public Payphones at the Federal Level**

The federal Telecommunications Act of 1996 (the “Act”) established guidelines for deregulating payphone service. Subsection (d) of 47 U.S.C. § 276 defines payphone service as the “...provision of public or semi-public pay telephones, the provisions of inmate telephone service in correctional institutions, and any ancillary services.” Section 276(b)(1)(A) of the Act directed the Federal Communications Commission (“FCC”) to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...” Subsequent to the Act, the FCC issued several orders interpreting Section 276 and outlining the provisions for implementing the objective of Congress to deregulate pay telephone services.

On September 20, 1996, the FCC released its first order establishing payphone deregulation pursuant to the requirements of the 1996 Act. Through this order, the FCC determined the best way to ensure fair compensation is to let the market set the price for individual calls, however, the FCC did so in two phases.<sup>4</sup> In the first phase, the FCC determined that states could continue to set the local coin rate in the existing manner or could move to market-based local coin rates anytime during the one-year period.<sup>5</sup> Moreover, the FCC concluded that a “deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not necessarily fairly compensatory.”<sup>6</sup>

At the end of this one year phase-in period to market-based rates the FCC stated that it would make an exception to the market-based approach for those states demonstrating that market failures would not allow for the development of market-based rates.<sup>7</sup> Evidence would include the examination of costs and whether the public interest is better served by establishing a set local coin rate. The FCC’s deliberations or findings did not allow the local coin rate for inmate pay telephones

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<sup>4</sup> *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-388, *Report and Order*, 11 FCC Rcd 20541 ¶ 50 (September 20, 1996)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 58

<sup>7</sup> *Id.* at ¶ 61

to be set in a manner inconsistent with the aforementioned findings. The FCC referred to “all payphones” in its September 20, 1996 Order and, consistent with the Act’s definition of payphone service, the FCC did not exclude inmate telephones from its requirements of deregulation. Finally, the FCC also required states to review their payphone regulations and determine whether any rules had an adverse effect on competition, such as entry and exit restrictions.<sup>8</sup>

In an Order on Reconsideration issued on November 8, 1996 (“Reconsideration Order”), the FCC reaffirmed its position regarding the deregulation of the local coin rate. At paragraph 57 of this Order, the FCC stated:

A number of states argue that our conclusions concerning local coin rates constitute unwarranted preemption of state authority over intrastate telecommunications and is inconsistent with Section 2(b) of the Act. We disagree. Section 276 gives the Commission significant authority to “take all actions necessary” to “promote the widespread deployment of payphone services to the benefit of the general public” and, more specifically, to ensure fair compensation for “each and every completed intrastate and interstate call.”<sup>9</sup>

In addition, the FCC denied all petitions for reconsideration that advanced primarily the argument that the FCC lacks jurisdiction to deregulate local coin rates or that the FCC’s action constitutes unwarranted preemption. Addressing inmate pay telephones in the Reconsideration Order, the FCC stated:

Section 276(d), which contains the only mention of inmate phones in the payphone statute, states that “term ‘payphone service’ means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.” In the Report and Order, we elected to treat inmate payphones in the same manner as all other payphones...<sup>10</sup>

In paragraph 219 of the Reconsideration Order, the FCC also stated that the requirements of its September 20, 1996 Order applied to all payphones, including inmate payphones.

The Inmate Calling Services Providers Coalition (“ICSPC”) sought reconsideration of several issues relating to inmate payphones as set forth in the two aforementioned FCC orders. Specifically,

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<sup>8</sup> *Id.* at ¶ 50

<sup>9</sup> *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-439, *Order on Reconsideration*, 11 FCC Rcd 21233 ¶ 57 (November 8, 1996)

<sup>10</sup> *Id.* at ¶ 72

the ICSPC requested that the FCC preempt state rate caps on local calls or allow inmate service providers to collect additional compensation on calls. The FCC denied ICSPC's petition in an Order released February 21, 2002.<sup>11</sup> The FCC's denial of the request to preempt states from establishing rate caps for inmate rates represented a significant change from the FCC's first two orders issued in 1996, in that the FCC's previous orders contained language indicating that inmate payphones should be treated no differently than other payphones.

Moreover, the FCC concluded that the fair compensation requirement in Section 276 did not require preemption of state local collect calling caps.<sup>12</sup> On the subject of fair compensation, the FCC referenced its earlier orders in instances where payphone providers contract with inmate facilities, stating

The Commission decided that contracts between the inmate calling service providers and the confinement facilities provide "fair compensation," as required by statute. The Commission reasoned that, "whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphone originates, then our statutory obligation to provide fair compensation is satisfied."<sup>13</sup>

The ICSPC, through its comments to the original FCC Order and in its request for reconsideration, asked the FCC to either establish a higher per call compensation for calls from inmate facilities or preempt states from establishing rate caps on inmate calls. The FCC responded, in essence, by directing the inmate payphone providers to go to the states if they wanted higher rates or contract for higher rates with inmate facilities.

### **State Regulation of Payphones**

In 1984, the divestiture of AT&T opened up the provisioning of public payphone service to competition. No state rules or regulations regarding payphones were in place when payphone competition came to Tennessee. In May 1985, the Tennessee Public Service Commission ("TPSC") issued an order allowing the resale of local service through public payphones and placed certain

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<sup>11</sup> *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 02-30, *Order on Remand & Notice of Proposed Rulemaking*, 17 FCC Rcd 3248 (February 21, 2002) Hereinafter, *FCC February 21, 2002 Order*

<sup>12</sup> *Id.* at ¶ 3

<sup>13</sup> *Id.* at ¶ 7

restrictions and requirements on new companies entering the marketplace.<sup>14</sup> The TPSC order restricted prohibitions against time limits and directory assistance charges and included requirements such as 911 access and the capability of the phone to complete local and long distance calls. The TPSC order stated that the rate for local calls could not exceed that of the local exchange company but did not place rate caps on long distance calls.<sup>15</sup>

Thereafter, Tennessee consumers began seeing a subsequent increase in the number of new company names providing public payphone service, some of which were overcharging for service and placing new restrictions on their payphones. In the wake of consumer complaints, the TPSC launched a statewide investigation in the summer of 1989 into the practices of public payphones in the State. The TPSC's Consumer Services Division inspected over 1,000 public payphones in the State and reported its findings to the TPSC. As a result of the Authority's findings, the TPSC promulgated Rules 1220-4-2-.43 through .54 that went into effect in July 1990. These rules mandated that specific information be posted on the payphone, established access requirements and set out rate restrictions on local and toll calls. These rules applied to both public and inmate payphones. The rate restrictions established in these rules were tied to the regulated local exchange rate for the local rate and to AT&T for the intrastate long distance rate. TRA Rule 1220-4-2-.45(2) established rates for payphones as follows:

Local call charges shall not exceed the amount authorized by the TPSC for a local call from pay telephones operated by the LEC serving the area in which the pay telephone is located.

TRA Rule 1220-4-2-.45(2) was in place at the time the local coin rate was deregulated by the FCC. The rule capped local charges from a payphone at the amount authorized for local calls from payphones operated by the local exchange carriers (LECs) serving in the same area. The FCC's directive to move to a market-based local rate and the fact that some LECs removed the rates from their tariffs resulted in confusion as to whether an effective cap remained in existence

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<sup>14</sup> See *In re Tariff Filing by the South Central Bell Telephone Company to Provide for Resale of Local Service Through Customer Provided Public Telephones*, TPSC Docket No. U-84-7329, Order (May 1, 1985)

<sup>15</sup> *Id.* at 10

### **BellSouth's Payphone Tariffs**

Based on the Orders issued by the FCC in 1996, BellSouth and the other LECs operating in Tennessee filed tariffs to deregulate the local message or coin rate for their public payphones. BellSouth's tariff, for example, stated that the coin rate was deregulated but would continue to be \$0.25 until October 7, 1997 – the end of the one-year phase set forth by the FCC during which time state commissions could continue setting the local coin rate.<sup>16</sup> BellSouth's tariff was approved by the TRA during the March 18, 1997 Conference, pending the outcome of a contested proceeding requested by the Tennessee Payphone Owners Association.<sup>17</sup> The contested case proceeding was convened, however, to determine the appropriate charges that BellSouth should assess for payphone lines. The issue of the local message rate was not addressed in that proceeding.

Effective October 7, 1997, BellSouth revised its tariff to remove the \$0.25 charge and included a new provision stating that the rate for local messages would now be market-based.<sup>18</sup> While state commissions were given the opportunity by the FCC to set the rate for local coin messages if a particular state commission could demonstrate to the FCC that the existing market did not allow for market-based rates, the TRA did not make such a determination or file with the FCC on this issue. In the absence of any state determination, the FCC orders effectively deregulated the local coin rate for public payphones in Tennessee at the end of one year – October 7, 1997.

### **Existing State of Inmate Payphone Regulations and Rules**

At the time the local coin rate was deregulated, TRA Rule 1220-4-2-.45(2) capped local charges from a payphone at the amount authorized for local calls from payphones operated by the LECs serving in the same area. That rule does not distinguish inmate payphones from other payphones. Pursuant to FCC orders, some LECs removed the rates for payphone service from their tariffs resulting in there being no specific LEC rate authorized by the Authority upon which a cap

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<sup>16</sup> Tariff 97-067

<sup>17</sup> See *In re Tariff Filing by BellSouth Telecommunications to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-067)*, Docket No. 97-00346, Order (April 7, 1997).

<sup>18</sup> Tariff 97-356

could be based. The only possible "authorized rate" on which a cap for local messages could be based would be a market rate.

For local calls from inmate facilities, there are two applicable rate elements. There is the surcharge for the operator assistance because calls must be billed to the inmate families via operator assistance. There is also the rate for the local message itself. This type of billing is similar to that of a long distance call billed to a credit card in which there is a surcharge along with a per minute long distance rate.

Tenn. Code Ann. § 65-5-106 establishes a maximum rate or cap for the operator assistance surcharge portion of a public payphone call.<sup>19</sup> This statute defines the maximum amount that telephone carriers can assess for operator surcharges as "the highest legal rate charged for handling an identical call by a carrier whose rates have been fixed by the authority based on the carrier's cost of providing service."<sup>20</sup> This portion of the local call from correctional facilities is not in question; BellSouth's existing tariff currently limits this operator surcharge to \$0.50. While Tennessee law imposes a rate cap on the operator surcharge portion of a local call, the rate that payphone carriers

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<sup>19</sup> **65-5-106. Operator-assisted telephone services - Carriers whose rates exceed maximum approved rates.**

(a) Any telephone carrier offering or providing operator-assisted services in Tennessee whose intrastate rates exceed the maximum rate approved by the Tennessee regulatory authority or whose interstate rates exceed the maximum rates approved by the federal communications commission (FCC) shall before providing the service

(1) Identify by name the carrier providing the service,

(2) State all costs for providing the service, and

(3) Offer to switch the customer to any other carrier offering operator-assisted services and inform the customer that the switch will be made without charge

(b) As used in this section:

(1) "Maximum rate approved by the federal communications commission (FCC)" means the highest legal rate charged for handling an identical call by a carrier which has been classified by the FCC as a dominant, interstate carrier or, if no carrier has been so classified, means the highest rate approved by the FCC as just and reasonable for an identical call;

(2) "Maximum rate approved by the Tennessee regulatory authority" means the highest legal rate charged for handling an identical call by a carrier whose rates have been fixed by the authority based on the carrier's cost of providing service, and

(3) "Operator-assisted services" means all telephone calls in which the customer is assisted by either a human or mechanical operator and includes, but is not limited to, calls billed to credit cards or third parties and all collect or person-to-person calls

(c) The authority may exempt any carrier from some or all of the provisions of this section upon a finding that the requirements herein are no longer necessary to protect the public interest

(d) Any telephone carrier violating the provisions of this section is guilty of violating the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, and shall be punished accordingly

<sup>20</sup> Tenn. Code Ann. § 65-5-106(b)(2)



can assess for the local message portion of the call is in question because the TRA's current rules do not contain a rate cap on the local message charge. Nevertheless, because states have not been preempted from establishing rate caps on inmate payphone rates, the question becomes one of establishing a rate cap for the local message portion of the call or allowing the market to set the rate. There are important distinctions between inmate telephones and regular payphones, and these factors must be considered in determining rates for inmate local call payphone rates

First, as the FCC points out, competition does not exist for the individuals that bear the cost of the call – the inmate families – but rather competition exists among the inmate payphone providers in the bidding process. The higher the rate that is charged for calls from inmate facilities, the higher the commission that can be paid to correctional facilities. In this scenario there is no downward pressure on rates<sup>21</sup> Following this premise, there may even be pressure in the bidding process for companies to charge higher rates; in this instance the market is not effectively regulating the rate.

In addition, in the usage of regular payphones consumers have the option of putting coins in the phone to complete a local call thereby avoiding operator surcharges. Because the charge is posted on the payphone, a consumer has the option of selecting another payphone provider if the consumer does not like the rate. Consumers may have other options for telephone service such as the use of cellular phones. Inmates, however, do not have the options available to regular consumers. For example, inmates must use operator assistance to complete calls, generally mechanized assistance automatically adds to the cost of the call. The use of cellular phones by inmates is usually prohibited by the correctional facilities. Because of these and other restrictions placed on the use of phones by inmates and the lack of choice of a provider of local telecommunications services, the rate for such services cannot be effectively set by the market.

The FCC orders in CC Docket No. 96-128 reveal that many state commissions have imposed rate ceilings on inmate local collect calls. Moreover, in response to the request by the ICSPC to

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<sup>21</sup> FCC February 21, 2002 Order at ¶ 12

pre-empt state commissions, the FCC has stated, "...[T]he record in this proceeding strongly suggests that any solution to the problem of high rates for inmates must embrace the states."<sup>22</sup> The FCC denied both requests of ICSPC for reasons enumerated in the *Order on Remand*. In addition, the FCC found no evidence that the aggregate compensation for local collect inmate calls is below cost.<sup>23</sup>

#### **July 2, 2004 Authority Conference**

On July 2, 2004, the voting panel assigned to this docket publicly convened to consider promulgating a rule pertaining to rates for inmate pay phone usage and tariffs filed with the TRA by AT&T Communications of the South Central States, Inc. ("AT&T"), Global Tel and ITI Inmate Telephone, Inc. setting such rates. During the meeting, counsel for AT&T, Global Tel and Pay-Tel Communications, Inc. submitted a chart containing data reflecting inmate local collect payphone call rates in the United States and suggested a rate cap of \$1.50, including operator surcharges, for inmate local collect pay phone calls. At the conclusion of the meeting, the panel voted to request comments regarding the attached chart and proposed rate cap no later than July 9, 2004. The panel also voted to reconvene to consider setting an interim rate cap for inmate local collect pay phone calls during the Authority Conference on July 26, 2004. During the July 2, 2004 meeting, the panel also voted to open a rulemaking proceeding to consider the establishment of a permanent rate and also to resolve any other issues related to payphones, both public payphones and payphones placed at inmate facilities.<sup>24</sup> A Notice of Filing Comments and Hearing, reflecting these two actions by the panel, was issued by the Authority on July 2, 2004 and sent to all interested parties, specifically all local service providers with inmate payphone tariffs on file with the TRA.

#### **Positions of Interested Parties:**

Written comments were filed in this docket pursuant to the Notice dated July 2, 2004, in addition to the positions set forth by parties participating during the July 2, 2004 meeting. Most

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<sup>22</sup> *Id.* at ¶ 29.

<sup>23</sup> *Id.* at ¶ 44.

<sup>24</sup> See Transcript of Proceedings, pp. 33, 41 and 42 (July 2, 2004).

parties agree that a cap on rates is necessary and further agree that an interim rate cap of \$1.50 per call, including operator surcharge and local call rate, is fair and reasonable. The lone exception is Sprint United which argued that inmate payphone service is competitive in Tennessee and that a cap is unnecessary and will only serve to inhibit competition.<sup>25</sup> The specific comments of the parties as set forth follows.

#### **AT&T, Pay-Tel and Global Tel\*Link**

AT&T, Pay-Tel and Global Tel did not file written comments, however their positions were made known in presentations during the July 2, 2004 meeting. Their position is that a cap is necessary to protect the interests of inmate families, and they agreed that a cap of \$1.50 per call would be acceptable. Based on the chart showing rates being charged in other states for local collect calls from inmate facilities, these companies assert that a \$1.50 rate would still be among the lowest rates in the nation for comparable service.

#### **Evercom Systems ("Evercom")**

Evercom Systems stated that security requirements imposed by inmate facilities require the installation and maintenance of costly equipment. Moreover, Evercom's costs have been increasing because law enforcement authorities want technological enhancements necessary to allow closer monitoring of calls for security reasons. Evercom also stated that inmate providers experience a higher than average uncollectible rate on billed calls. For these reasons, Evercom agreed that an increase in the current cap is necessary and supported the interim rate cap of \$1.50 per call while the TRA further analyzes this issue.

#### **ITI Inmate Telephone ("ITI")**

A representative of ITI participated by telephone during the July 2, 2004 meeting. The representative stated that while ITI did not oppose a \$1.50 rate cap, it could not take a position on whether a \$1.50 cap is reasonable.

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<sup>25</sup> Letter to Chairman Pat Miller from Edward Phillips, Esq (July 9, 2004).

### **Sprint United ("Sprint")**

In its comments filed with the Authority, Sprint argued that inmate payphone service is competitive in Tennessee as evidenced by the number of providers and the Department of Corrections' RFP (Request for Proposal) process. Accordingly, Sprint asserted that a cap is not necessary and argued that establishing a cap on inmate payphones would inhibit future benefits of this competitive market. Nevertheless, if the Authority established a cap, Sprint contended that the rate should cover the related cost of the call or an alternate source of funding should be made available to providers

### **Department of Corrections**

Mr. Roger Coffelt appeared on behalf of the Tennessee Department of Corrections at the July 2, 2004 meeting. He expressed the Department's support for a \$1.50 rate cap. He stated that the \$1.50 rate represents an increase to the \$1.00 rate currently being charged at facilities under the control of the Department of Corrections.

### **FINDINGS AND CONCLUSIONS:**

Based on a review of the filings, local collect call rates in the nine BellSouth states are among the lowest in the nation. The filings reveal that while the national average varies between \$2.48 and \$3.46<sup>26</sup> for a 12 minute inmate local collect call, the average for the BellSouth region is only \$2.10<sup>27</sup> per call. Nevertheless, there is no evidence of below cost rates which would threaten the financial viability of providers of this service. The Authority recognized that the inmate phone market remains a monopoly with very little opportunity for competitive market pressures. So long as customer choice is not available, regulation is necessary to protect consumers from abusive practices by monopolies.

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<sup>26</sup> Based on average rate for a 12 minute inmate local collect call usage and surcharge in 49 states as provided in this proceeding by Global Tel\*Link on July 2, 2004 and by Pay-Tel Communications on July 9, 2004

<sup>27</sup> An average rate for the nine BellSouth states for a 12 minute inmate local collect call usage and surcharge was calculated based on a chart filed in this proceeding by Global Tel\*Link on July 2, 2004. The Authority updated this chart with newer rate information for the State of Alabama (\$2.50 surcharge and \$0.50 local usage). Those states are Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee

Because inmate payphones require additional features that are not necessarily required on general public payphones, charges for telephone calls made by inmates are generally higher than phone rates paid by the general public, but should be comparable to other correctional facilities in other states. In addition, because such calls are costly for those persons who receive them, the public interest requires that the Authority consider all factors to keep the rates charged for inmate payphone calls as low as possible without injuring the interests of providers of such services. The Authority finds that it is in the public interest that a rulemaking proceed to establish the proper compensation for these services and through further investigation determine the appropriate, just and reasonable rates for inmate local collect calls.

Although the evidence presented indicates that Tennessee inmate local collect intraLATA rates are among the lowest in the nation, no party presented any evidence that the rates do not sufficiently compensate the providers of the services. With the exception of Sprint United, all other interested parties voiced their support for the Authority establishing an interim rate for local payphone calls from inmate facilities.

This docket has been opened in order to determine an interim rate, if any, per call for local message rate and fixed surcharge for all inmate local collect phone services in Tennessee until such time as a just and reasonable permanent rate will be established by the Authority at the completion of the rule making proceeding. The Authority's determination of an interim rate is based on the following two assumptions. In the absence of cost studies demonstrating the true cost of phone services located at correctional facilities, the assumption is made that rates based on a proxy approach for identical services are presumptively a true representation of a fair compensation for this service. Indeed, a fair compensation for providers of inmate phone services should allow those providers to earn rates comparable to those earned by such other providers in the BellSouth region, especially since these providers use the same identical underlying facilities. In addition, the

Authority made a second assumption that any interim rate should be no less than the prevailing rate adjusted for inflation, which would be \$0.75 adjusted to \$1.08.<sup>28</sup>

Considering BellSouth region – excluding Tennessee – and based on data provided by Global Tel<sup>29</sup> together with the correction of the rate for Alabama, the average local message rate is \$0.54 per call and the average fixed surcharge per call is \$1.70, amounting to a total of \$2.24 per call<sup>30</sup> Including the prevailing rates in Tennessee of \$0.50 per call for local message rate and \$0.50 per call fixed surcharge, the averages for the BellSouth region are \$0.53 per call for local message rate and \$1.57 per call for fixed surcharge, amounting to a total of \$2.10 per call.<sup>31</sup> Therefore, considering that the local rate charge was \$0.50 effective October 7, 1997, the Tennessee rate per call adjusted for inflation would be \$1.17 per call<sup>32</sup> at the end of June 2004. Comparing this inflation-adjusted rate to the average of the BellSouth region of \$2.10 per call, the Authority finds that an interim rate of \$1.50 per call is reasonable.

The voting panel acknowledged that it is the Authority's duty always to take into account the public interest concerns, recognizing these particular consumers, their families and their limitations

Based on the comments from other numerous payphone providers and from the statements made in person before the panel, including those from a representative of the Tennessee Department of Corrections and the fact that the rates have not been raised in a number of years, taking into account inflationary increases and utilizing a comparison of the fifty states as a proxy, as well as

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<sup>28</sup> Based on the Consumer Price Index – Inflation Calculator made available by the federal Bureau of Labor Statistics (see <http://www.bls.gov>) and on “Consumer Price Index for All Urban Consumers All Items” monthly inflation data made available by the Federal Reserve Bank of St. Louis at <http://research.stlouisfed.org/fred2/data/CPIAUCNS.txt> Using the cap of \$0.75 per call that was last approved by the Authority effective July 1, 1990, the rate adjusted for inflation from July 1990 to June 2004 is \$1.08

<sup>29</sup> The chart comparing inmate phone rates was entered into the record and parties were given an opportunity to comment on the chart. With the exception of Pay-Tel Communications which presented a slightly different chart, none of the parties found fault with the chart.

<sup>30</sup> See footnote 27 above. When one excludes Tennessee in the Bellsouth region, the average rates for the remaining eight states are \$0.54 for local collect call usage and \$1.70 for the surcharge.

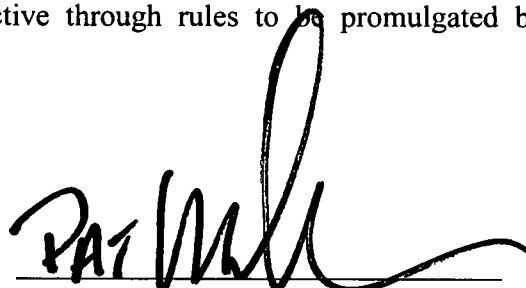
<sup>31</sup> See footnote 27 above. The average rates for the nine BellSouth states which include the State of Tennessee are \$0.53 for local collect call usage and \$1.57 for the surcharge.

<sup>32</sup> Applying the same inflation data referenced in footnote 28 above on the total rate of \$1.00 (\$0.50 for local collect call usage and \$0.50 surcharge) effective October 7, 1997, the rate adjusted for inflation from November 1997 to June 2004 would be \$1.17. Using the same inflation data on the Authority approved rate of \$0.75 effective July 1, 1990, the rate adjusted for inflation to June 2004 would be \$1.08

reviewing rates of states in the BellSouth region, a majority of the panel voted to adopt an interim rate of \$1.50.<sup>33</sup>

**IT IS THEREFORE ORDERED THAT:**

The interim rate for local collect calls from correctional facilities shall be capped at \$1.50 per call until a rate is established and becomes effective through rules to be promulgated by the Authority.

  
Pat Miller, Chairman  
Deborah Taylor Tate, Director

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Ron Jones, Director

<sup>33</sup> Director Jones did not vote with the majority. He stated that taking the 1997 level of the rate, the 50-cent surcharge and applying the inflation calculator to arrive at an interim rate would be a more accurate assessment of what is just and reasonable. He concluded that "having done that for an interim rate, I come up with \$1.16. I would move that the rate be \$1.16, pending the final outcome in the rule making." Director Ron Jones, Transcript, pp. 29-30 (July 26, 2004).